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24 February 2021

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# Consultation Paper

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Draft Regulatory Technical Standards

on colleges of supervisors for investment firm groups in accordance with Article 48(8) of Directive (EU) 2019/2034 (Investment Firms Directive)

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# 1. Responding to this consultation

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The EBA invites comments on all proposals put forward in this paper and in particular on the specific questions summarised in 5.2.

Comments are most helpful if they:

- respond to the question stated;
- indicate the specific point to which a comment relates;
- contain a clear rationale;
- provide evidence to support the views expressed/ rationale proposed; and
- describe any alternative regulatory choices the EBA should consider.

## Submission of responses

To submit your comments, click on the ‘send your comments’ button on the consultation page by **23 April 2021**. Please note that comments submitted after this deadline, or submitted via other means may not be processed.

## Publication of responses

Please clearly indicate in the consultation form if you wish your comments to be disclosed or to be treated as confidential. A confidential response may be requested from us in accordance with the EBA’s rules on public access to documents. We may consult you if we receive such a request. Any decision we make not to disclose the response is reviewable by the EBA’s Board of Appeal and the European Ombudsman.

## Data protection

The protection of individuals with regard to the processing of personal data by the EBA is based on Regulation (EU) 1725/2018 of the European Parliament and of the Council of 23 October 2018. Further information on data protection can be found under the Legal notice section of the EBA website.

## 2. Executive Summary

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The draft regulatory technical standards (RTS) developed in accordance with the mandate from Article 48(8) of Directive (EU) 2019/2034 (Investment Firms Directive, IFD) specify the conditions under which colleges of supervisors, established with a view of making supervision of cross-border investment firms more effective and efficient, exercise their tasks.

The draft RTS is built on the experience obtained over the years in the colleges of supervisors of credit institutions and larger and more complex investment firms groups that have been established in accordance with Directive 2013/36/EU whilst recognising the specificities of the supervision of smaller and less complex investment firms.

The draft RTS are structured around four main sections: (1) establishment of colleges, (2) functioning of colleges; (3) planning and coordination of supervisory activities in going concern situations; and (4) planning and coordination of supervisory activities in preparation for and during emergency situations, where:

- a. Section 1 helps to ensure level playing field across the Member States in establishing the colleges of supervisors. In particular, in order to ensure consistency in the application of the principle of proportionality, the draft RTS provide a set of criteria to help group supervisor to determine whether the establishment of a college of supervisors is appropriate;
- b. Section 2 provides the set of requirements for the written arrangements, deals with the practical details around the participation of authorities, including authorities other than members and the EBA, in college meetings and activities as well as with the details of the communication between the college and the investment firm group;
- c. Section 3 specifies the information to be exchanged and cooperation between the authorities to be organised for certain joint activities, such as performance of supervisory review and evaluation process (SREP), the ongoing review of the permission to use internal models, and compliance issues. This section also introduces the requirements for developing college supervisory examination programmes;
- d. Section 4 sets out the requirements for the planning and coordination of supervisory activities in preparation for and during emergency situations. These provisions aim to ensure that colleges establish an appropriate framework for information sharing and put their efforts into developing a coordinated supervisory assessment of emergency situations, agreeing on coordinated supervisory actions to address these situations, and monitoring the implementation of these actions in a coordinated.

Taking into account that the draft RTS related to the cooperation between the competent authorities with limited impact on investment firms, a shorter consultation period of two months is proposed.

The draft RTS will be finalised following the completion of the public consultation and delivered to the European Commission by the end of June 2021.

### 3. Background and rationale

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Enhanced cooperation between authorities at both the EU and global level is key to strengthening the supervision of cross-border investment firm groups. Colleges of supervisors allow supervisory authorities to join forces, share knowledge and use skills and resources more effectively and efficiently, regardless of their individual jurisdiction. This requires determination and significant efforts to prompt coordinated approaches among competent authorities. Supervisory colleges should ensure a common and aligned work programme and coordinated supervisory actions and decisions. Cooperation between the group supervisor and the competent authorities of host Member States, where investment firms groups operate through subsidiaries or branches should be strengthened through a higher degree of transparency and information sharing during going concern and emergency situations.

Article 48(8) of the Directive (EU) 2019/2034 (Investment Firms Directive, IFD) mandates the EBA, in consultation with ESMA, to develop draft regulatory technical standards to specify the conditions under which the colleges of supervisors exercise their tasks in accordance with Article 48 of the IFD.

The standards are structured around four main sections: (1) establishment of colleges, (2) functioning of colleges; (3) planning and coordination of supervisory activities in going concern situations; and (4) planning and coordination of supervisory activities in preparation for and during emergency situations.

The section on the establishment of colleges provides requirements for the mapping of investment firms groups that allows the group supervisors to identify the perimeter and entities of an investment firm group and to assess their importance for the group, markets and Member States they operate in – all with a view of identifying what authorities should be invited to join the college as members or other participating authorities.

The mapping of investment firm groups is an important tool for the group supervisors in determining the establishment of colleges of supervisors. Article 48(1) provides *that Member States shall ensure that the group supervisor determined pursuant to Article 46 of this Directive may, if appropriate, establish colleges of supervisors to facilitate the exercise of the tasks referred to in this Article and to ensure coordination and cooperation with relevant third-country supervisory authorities in particular where this is needed for the purpose of applying point (c) of the first subparagraph of Article 23(1) and Article 23(2) of Regulation (EU) 2019/2033 to exchange and update relevant information on the margin model with the supervisory authorities of qualifying central counterparties (QCCPs)*. To this end and in order to ensure the application of the principle of proportionality, the regulatory technical standards provide group supervisors with guidance and set of criteria to take into consideration when determining that a college should be established.

The section on the functioning of colleges provides the set of requirements for the written arrangements building on the experience with preparing such arrangements for the colleges of supervisors established for credit institutions under the CRD. Furthermore, this section deals with the practical details around the participation of authorities in college meetings and activities, and in

particular, participation of authorities other than members of the college as set out in Article 48(5) of the IFD and the EBA, as well as with the details of the communication between the college and investment firm group.

The third section specifies the information to be exchanged and cooperation between the authorities to be organised for certain joint activities, such as performance of supervisory review and evaluation process (SREP) and the ongoing review of the permission to use internal models, and compliance issues. This section also introduces the requirements for developing college supervisory examination programme – tool for the coordinated planning of supervisory activities with reference to the outcomes of SREP for the investment firm groups.

The last section of the technical standards introduces new requirements for the planning and coordination of supervisory activities in preparation for and during emergency situations, with the provisions of the draft RTS introducing further details relating to the framework of cooperation among the members of a college when dealing with emergency situations, building on the experience gained from similar activities in the colleges established for credit institutions. The new provisions aim to ensure that colleges establish an appropriate framework for information sharing and put their efforts into developing a coordinated supervisory assessment of emergency situations, agreeing on coordinated supervisory actions to address these situations, and monitoring the implementation of these actions in a coordinated way as detailed in the RTS.

The technical standards have been prepared with an objective of fostering more coordinated and efficient approach to cooperation between the authorities involved in the supervision of cross-border investment firms with a view of making such supervision more effective and efficient. Whilst the standards are developed for the purposes of investment firm groups, they build on more than ten years of experience gained by the EBA with the colleges of supervisors established for credit institutions.

## 4. Draft regulatory technical standards

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**COMMISSION DELEGATED REGULATION (EU) No .../..**

of **XXX**

**supplementing Directive (EU) 2019/2034 of the European Parliament and of the Council with regard to regulatory technical standards for specifying the conditions under which colleges of supervisors exercise their tasks**

THE EUROPEAN COMMISSION,

Having regard to the Treaty on the Functioning of the European Union,

Having regard to Directive (EU) 2019/2034 of 27 November 2019 of the European Parliament and of the Council on the prudential supervision of investment firms and amending Directives 2002/87/EC, 2009/65/EC, 2011/61/EU, 2013/36/EU, 2014/59/EU and 2014/65/EU, and in particular to Article 48(8) thereof,

Whereas:

- (1) The performance of the mapping of an investment firm group, which would identify the group entities in the Union or a third country and which would describe for each group entity its nature, location, the authorities involved in its supervision, the applicable prudential exemptions, its importance for the group and its importance for the country in which it is authorised or established, is considered a vital element for the purposes of establishing the colleges and identifying the members and other authorities to be potentially invited to participate in the college.
- (2) Convergence in the practices of group supervisors regarding the establishment of colleges for investment firms groups is an important element ensuring consistent application of Article 48 of Directive (EU) 2019/2034 across the Union and thus ensuring the level playing field. Recognising the optionality of the establishment of colleges for the group supervisors, it is essential to set common criteria for the group supervisors to take into consideration when determining that a college should be established, including the proportionality criteria, the need to facilitate supervisory tasks, cooperation with relevant third-country supervisory authorities to exchange and update relevant information on the margin model with the supervisory authorities of the clearing members of the qualifying central counterparties (QCCPs) or the supervisory authorities of the QCCPs.
- (3) The written arrangements referred to in Article 48(6) of Directive (EU) 2019/2034 should cover all areas of college work to strengthen the efficiency of supervisory colleges. The written

arrangements should also cover arrangements among college members involved in specific college activities such as those performed through specific substructures of the college, where such substructures are established for efficiency purposes. The written arrangements should also include operational aspects of college work as these aspects are essential for facilitating the functioning of the college both in going concern and during emergency situations. The written arrangements should be comprehensive, coherent and exhaustive and should provide an adequate and appropriate basis to the competent authorities in order for them to discharge their relevant duties and tasks within, rather than outside the college.

- (4) Colleges are a key tool for exchanging information, anticipating and dealing with emergency situations, and enabling the group supervisor to conduct effective supervision on a consolidated basis. To ensure consistency and enable the EBA to perform its tasks as provided for in Regulation (EU) No 1093/2010, it is appropriate for the EBA to participate in all colleges as a participant. Furthermore, given the coordinating role performed by the colleges of supervisors for all supervisory activities regarding the investment firm groups stemming from other applicable legislation, it is important that the group supervisors always invite ESMA to participate in college meetings and activities in accordance with the written arrangements.
- (5) In order to perform all college activities, the group supervisor and the other members of the college should have an overview of the activities carried out by all entities of the investment firm group, including those carrying out financial activities without being qualified as investment firms and those operating outside the Union. Interaction between the group supervisor, college members and, public authorities or bodies in a Member State, which are responsible for or involved in the supervision of any entity of the investment firm group, including authorities responsible for the prudential supervision of group entities or competent authorities responsible for the supervision of markets in financial instruments, the prevention of the use of the financial system for the purpose of money laundering and terrorist financing, or consumer protection, should be promoted by allowing these public authorities or bodies to participate in the college work, as appropriate.
- (6) College members should discuss and agree on the scope and level of involvement of other authorities, if any, to participate in the college. The framework of participation of such authorities in the college should be clearly stated in the written arrangements and should be communicated to all authorities participating in the college.
- (7) Members of the college of supervisors should work together, coordinating their supervisory actions to the maximum extent possible and cooperating closely in order to better perform their duties, to avoid duplication of tasks, including duplication of information requests addressed to the supervised entities of the group. In this context, agreements on entrustment of tasks and delegation of responsibilities should be considered on a regular basis by the members of the college, and at least when college members develop their college supervisory examination programme, where relevant.
- (8) The group supervisor should have access to all information necessary for the performance of its tasks and responsibilities and should act as the coordinator for the collection and dissemination of information received from any college member or other participant or from any entity of the group, or any input received from any other supervisory structures established in relation to the investment firms group. The same applies also for the members of the college. In particular, where the group supervisor determines the relevance of particular information for another member of the college, it should refrain from unjustifiably excluding members of the college from receiving information.
- (9) To facilitate cooperation between competent authorities and to coordinate any decisions intended to address issues of compliance by an institution with the requirements regarding approaches that need permission by competent authorities before being used for the calculation of own fund requirements using internal models, the conditions of cooperation between the

group supervisor and the relevant competent authorities for exchanging information on the performance of those internal approaches, and for discussing and reaching agreement on measures to address inefficiencies identified should be specified.

- (10) To develop the college supervisory examination programme, college members shall take into account the outcomes of the supervisory review and evaluation process performed for the investment firm group and its entities in accordance with Article 36 of Directive (EU) 2019/2034. Thus, the development of the college supervisory examination programme should start once the supervisory review and evaluation process has been concluded, while for its finalisation the competent authorities should consider the tasks they have committed to perform at national level, the resources allocated to those tasks and the respective timelines for their performance.
- (11) Members of the college should coordinate their activities in preparation for and during emergency situations such as adverse developments which may seriously jeopardise the orderly function and the integrity of the financial markets or the stability of the whole or part of the financial system of the Union, or other situations that affect or might explicitly affect the financial and economic situation of an investment firm group or any of its entities.
- (12) When dealing with an emergency situation, college members, under the coordination of the group supervisor, should aim to develop a coordinated supervisory assessment of the situation, agree on a coordinated supervisory response and monitor the implementation of their response to ensure that the emergency situation is properly assessed and addressed. They should also ensure that any external communication is done in a coordinated way and covers elements which are agreed ex-ante between the members of the college.
- (13) This Regulation is based on the draft regulatory technical standards submitted by the European Banking Authority (EBA) to the Commission.
- (14) The EBA has conducted open public consultations on the draft regulatory technical standards on which this Regulation is based, analysed the potential related costs and benefits and requested the opinion of the Banking Stakeholder Group established in accordance with Article 37 of Regulation (EU) No 1093/2010.

HAS ADOPTED THIS REGULATION:

## SECTION 1

### ESTABLISHMENT OF COLLEGES

#### *Article 1*

##### *The mapping of an investment firm group*

- (1) For the purpose of identifying the members and other authorities to be potentially invited to participate in the college, the group supervisor shall establish the mapping of an investment firm group.
- (2) The mapping of an investment firm group, shall result in the identification of the following group entities:
  - (a) investment firms authorised and branches established in a Member State;
  - (b) financial institutions, ancillary services undertakings and tied agents and branches of

- such group entities authorised or established in a Member State; and
  - (c) investment firms, financial institutions, ancillary services undertakings and tied agents and branches of such group entities authorised or established in a third country.
- (3) The following information shall be reflected in the mapping for the group entities referred to in point (a) of paragraph 2:
- (a) the Member State where the investment firm is authorised or the branch established;
  - (b) the competent authority responsible for the supervision of the investment firm or the competent authority of the host Member State where the branch is established as well as other relevant financial sector authorities of that Member State, such as competent authorities responsible for the supervision of markets in financial instruments, the prevention of the use of the financial system for the purpose of money laundering and terrorist financing, or consumer protection;
  - (c) for an investment firm, including for a subsidiary of the head of an investment firms group, which is either a Union investment firm, Union parent investment holding company or Union parent mixed financial holding company ('Union parent undertaking') established in the same Member State as well as for the parent undertaking itself, information on the classification of the investment firm, in particular:
    - (i) whether the investment firm is subject to the prudential requirements in accordance with Regulation (EU) 575/2013 and Directive 2013/36/EU;
    - (ii) whether the investment firm is small and non-interconnected investment firms in accordance with Article 12 of Regulation (EU) 2019/2033
- (4) The following information shall be reflected in the mapping for the group entities referred to in points (b) and (c) of paragraph 2:
- (a) the Member State or the third country where the group entity has been authorised or established;
  - (b) the authority responsible for or involved in the supervision of that group entity;
  - (c) information on the importance of the group entity for the investment firm group from the point of view of investment firm group.

## *Article 2*

### *Establishment of a college*

- (1) To determine whether the establishment of a college is appropriate, the group supervisor shall take into account the mapping of the group referred and consider the following:
- (a) whether the investment firm group consists of at least two investment firms authorised and operating in two different Member States, in particular where these firms are not designated as small and non-interconnected investment firms in accordance with Article 12 of Regulation (EU) 2019/2033;
  - (b) whether the exercise of the tasks referred to in Article 48 of Directive (EU) 2019/2034 would be facilitated by the establishment of a college;
  - (c) whether the coordination and cooperation with relevant third-country supervisory authorities would be better performed, in particular where such coordination and cooperation is needed for the purpose of applying point (c) of the first subparagraph of Article 23(1) and Article 23(2) of Regulation (EU) 2019/2033 to exchange and update

relevant information on the margin model with the supervisory authorities of the clearing members of the qualifying central counterparties (QCCPs) or the supervisory authorities of QCCPs.

- (2) Where any of the conditions set out in points (a) to (c) of the previous paragraph are met, the establishment of a college shall be deemed as appropriate, except where the group supervisor considers that such an establishment would not be appropriate having regard in particular to the mapping of the group referred to in Article 1.

### *Article 3*

#### *Communication regarding the establishment of a college*

- (1) Where the group supervisor has established a college, it shall:
- (a) notify the members of the college as set out in Article 48(5) of Directive (EU) 2019/2034 about their membership in the college;
  - (b) inform the EBA and the Union parent undertaking about the establishment of a college and the identity of its members and other participants, as well as any changes of the composition of the college.
- (2) In the case that a college has not been established and the conditions specified in Article 2(1)(a) are met, the group supervisor shall communicate without undue delay to the EBA its determination not to establish a college and provide reasons thereto.

## **SECTION 2**

### **FUNCTIONING OF COLLEGES**

#### *Article 4*

#### *Establishment of the written arrangements*

The written arrangements referred to in Article 48(6) of Directive (EU) 2019/2034 shall include, at least, the following:

- (a) information on the overall structure of the group covering all group entities, including the Union parent undertaking;
- (b) description of the terms of participation in the college of the third country supervisory authorities as referred to in Article 48(5)(b) of Directive (EU) 2019/2034 in particular as to their involvement in the various dialogues and processes of the college and the rights and obligations of these authorities with regard to exchanging information within the college;
- (c) determination of whether the group supervisor may invite other participants as referred to in Article 5(1) as well as the terms of their participation in the college activities;
- (d) identification of the members, including the members that are third-country supervisory authorities and of the other participants to the college;
- (e) description of the arrangements for exchanging information including their scope, frequency and channels of communication, including communication with third-country supervisory authorities, and resolution authorities set out in point (v) of Article 4 (2) of Regulation 1093/2010 that could have been invited to participate in

the college;

- (f) description of the arrangements for the treatment of confidential information;
- (g) description of the arrangements on delegation of tasks and responsibilities, where relevant;
- (h) description of any substructures of the college, where relevant;
- (i) description of the framework for the planning and coordination of supervisory activities in going concern situations;
- (j) description of the framework for the planning and coordination of supervisory activities in preparation for and during emergency situations, including contingency planning, communication tools and procedures;
- (k) description of the procedures for the collection of information from the entities of the investment firm group, and the procedures for the verification of that information;
- (l) description of the procedures for consulting the group supervisor in the cases of the imposition of significant sanctions on entities of the investment firm groups to be taken by the participants in the college;
- (m) description of the communication policy of the group supervisor and the members of the college with the Union parent undertaking and with the group entities;
- (n) agreed procedures and time frames to be followed for the circulation of the documents for college meetings;
- (o) any other agreement between the college members, including agreed indicators for identifying the early warning signs, potential risks and vulnerabilities;
- (p) provisions covering arrangements in case of discontinuation of any participation in the college;
- (q) description of the process for coordination of information requests from the supervisory authorities of the clearing members of the QCCPs or the supervisory authorities of the QCCPs.

## *Article 5*

### *Participation of authorities in a college*

- (1) Where a college has been established in accordance with Article 2, the group supervisor shall, where appropriate, invite the following authorities to participate in the meetings and activities of the college in addition to the members of the college as set out in Article 48(5) of Directive (EU) 2019/2034, and the European Banking Authority (EBA) in accordance with Article 48(4) of that Directive:
  - (a) competent authorities of host Member States where branches of a Union parent undertaking are established;
  - (b) the European Securities and Market Authority (ESMA);
  - (c) the ESCB central banks of a Member State where a group entity, including the Union parent undertaking, is authorised or established;
  - (d) the public authorities or bodies in a Member State, which are responsible for or involved in the supervision of any entity of the investment firm group, including authorities responsible for the prudential supervision of the group entities or competent authorities

responsible for the supervision of markets in financial instruments, the prevention of the use of the financial system for the purpose of money laundering and terrorist financing, or consumer protection.

- (e) resolution authorities referred to in point (v) of Article 4(2) of Regulation (EU) No 1093/2010.
- (2) The group supervisor in consultation with the members of the college shall specify the arrangements covering the participation of the authorities specified in paragraph 1(a) - (e) in the college in the written coordination and cooperation arrangements referred to in Article 4. The group supervisor shall notify these arrangements to all participants in the college.
- (3) When organising a college meeting or activity in accordance with Article 48(6) of Directive (EU) 2019/2034, the group supervisor shall take into account the following:
  - (a) the topics to be discussed and the objective of the meeting or activity, in particular with regard to their relevance for all the entities of the investment firm group as per the mapping performed in accordance with Article 1; and
  - (b) the significance of any entity of the investment firm group as per the mapping performed in accordance with Article 3, both for the investment firm group and for the Member State where that entity has been authorised or established.
- (4) The group supervisor, the members and other participants in the college shall ensure that the most appropriate representatives participate in the college meetings or activities based on the topics discussed and objectives pursued. These representatives shall have the power to commit their authorities as members or participants in the college, to the maximum extent possible, for the decisions planned to be taken during these meetings or activities.
- (5) The group supervisor may invite representatives of entities of the investment firm group to participate in a college meeting or activity, based on the topics and objectives of the college meeting or activity.

## *Article 6*

### *Delegation of tasks and responsibilities*

- (1) While developing the college supervisory examination programme in accordance with Article 13, and updating it where necessary, the group supervisor and the members of the college shall consider the possibility of agreements on voluntary delegation of tasks and responsibilities pursuant to Article 48(2)(e) of Directive (EU) 2019/2034, especially if such delegation is expected to lead to more efficient and effective supervision, in particular by removing unnecessary duplication of supervisory requirements, including in relation to information requests.
- (2) The conclusion of an agreement on delegation of tasks and responsibilities shall be notified by the group supervisor to the Union parent undertaking, and by the competent authority, which delegates its powers, to the investment firm concerned.

## *Article 7*

### *Exchange of information between college members and an investment firm group*

- (1) The group supervisor and the members of the college shall coordinate the communication to and the request of information from any entity of the investment firm group:

- (a) the group supervisor shall be responsible for communicating to and requesting information from the Union parent undertaking;
  - (b) the members of the college shall be responsible for communicating to and requesting information from the entities of the investment firm group as per in the mapping performed in accordance with Article 1, which are under their supervisory remit.
- (2) When, exceptionally, a member of the college intends to communicate to or request information from the Union parent undertaking, it shall inform the group supervisor in advance.
- (3) When, exceptionally, the group supervisor intends to communicate to or request information from an entity of the investment firm group as per in the mapping performed in accordance with Article 1, which is outside its direct supervisory remit, it shall inform in advance the relevant member of the college responsible for supervising that entity .

### SECTION 3

#### PLANNING AND COORDINATION OF SUPERVISORY ACTIVITIES IN GOING CONCERN SITUATIONS

##### *Article 8*

###### *General conditions with regard to exchange of information within the college*

- (1) The group supervisor and the members of the college shall exchange among themselves all information necessary to facilitate the exercise of the tasks referred to in, 48 and 49 of Directive (EU) 2019/2034, subject to the confidentiality requirements laid down in Section 2 of Chapter 1 of Title IV of that Directive.
- (2) The group supervisor and the members of the college shall exchange all essential information with each other, whether received from the investment firm group or group entity, a competent or supervisory authority or any other source. This information shall be adequate, accurate and timely, thereby enabling and facilitating the efficient, effective and full performance of the supervisory tasks of the college members.
- (3) The group supervisor and the members of the college shall exchange all information that is relevant for the exercise of their respective functions and duties with resolution authorities referred to in point (v) of Article 4 (2) of Regulation 1093/2010 that could have been invited to participate in the college.

##### *Article 9*

###### *Information exchange for increasing the efficiency of supervision of investment firm groups*

- (1) For the purposes of increasing the efficiency of supervision of investment firm groups in accordance with Article 48(2)(f) of Directive (EU) 2019/2034, the group supervisor and the members of the college shall regularly exchange information at least regarding the following:
  - (a) information as provided in Article 13(1) and 13(2) of Directive (EU) 2019/2034 and further specified in the Commission Delegated Regulation (EU) No XXXXXXXX;

- (b) information necessary for meeting the cooperation requirements in accordance with Article 49 of Directive (EU) 2019/2034;
  - (c) outcomes of supervisory review and evaluation process as specified in Article 10;
  - (d) ongoing review of the permissions to use internal models as specified in Article 11.
- (2) The group supervisor and the members of the college shall also consider exchanging information on the macroeconomic environment in which the investment firm group and its entities operate.
- (3) Based on the information exchanged in accordance with the previous paragraphs, the group supervisor and the members of the college shall identify and exchange quantitative information aiming to identify early warning signs, potential risks and vulnerabilities and to inform the supervisory review and evaluation process.

### *Article 10*

#### *Information exchange for the purposes of supervisory review and evaluation process*

- (1) For the purposes of increasing the efficiency of supervision of investment firm groups in accordance with Article 48(2)(f) of Directive (EU) 2019/2034, the group supervisor and the members of the college shall exchange information on the outcomes of the supervisory review and evaluation process (SREP) performed in accordance with Article 36 of that Directive.
- (2) The information referred to in previous paragraph shall include the outcome of the assessment and at least the following:
  - (a) elements of the supervisory review and evaluation process as provided in Article 36(1) of Directive (EU) 2019/2034;
  - (b) capital adequacy assessment, including, where applicable, additional own funds requirements set in accordance with Articles 39 and 40 of Directive (EU) 2019/2034 and guidance on additional own funds set in accordance with Article 41 of that Directive;
  - (c) liquidity adequacy assessment, including, where applicable, specific liquidity requirements set in accordance with Articles 39 and 42 of Directive (EU) 2019/2034;
  - (d) other supervisory measures or early intervention measures taken or planned to be taken in order to address the inefficiencies identified as a result of the supervisory review and evaluation process; and
  - (e) findings from on-site inspections and off-site monitoring that are relevant for the assessment of the risk profile of the investment firm group or any of its entities.

### *Article 11*

#### *Information exchange with regard to the ongoing review of the permission to use internal models*

- (1) For the purposes of ensuring coherence and co-ordination with regard to the ongoing review of the permission to use internal models as referred to in Article 37 of Directive (EU) 2019/2034, the group supervisor and the members of the college, shall exchange all relevant information, without limitation on the outcome of this ongoing review.
- (2) Where the group supervisor or any member of the college has identified that an entity of the investment firm group as per in the mapping performed in accordance with Article 1, including

the Union parent undertaking, no longer meets the requirements for applying internal models or has identified weaknesses in accordance with Article 37 of Directive (EU) 2019/2034, they shall immediately exchange the following information, as applicable:

- (a) assessment of the effect of the weaknesses identified and issues of non-compliance and their materiality;
  - (b) assessment of the plan to restore compliance and to address the weaknesses identified as presented by the relevant entity, including information on the timeline for its implementation;
  - (c) information on the intention of the group supervisor or of any relevant member of the college to revoke the permission or restrict the use of the model to compliant areas or those where compliance can be achieved within an appropriate timeline or those areas that are not affected by the weaknesses identified; and
  - (d) information on any proposed additional own funds requirements pursuant to Article 39(2)(a) in conjunction with Article 40(1)(d) of Directive (EU) 2019/2034 as a supervisory measure to address the issues of non-compliance or weaknesses identified.
- (3) The group supervisor and the members of the college shall also exchange information regarding extensions or changes in these internal models.

### *Article 12*

#### *Information exchange with regard to non-compliance and sanctions*

- (1) The members and other participants in the college shall communicate to the group supervisor information regarding any situations in respect of which they have determined that an entity as per in the mapping performed in accordance with Article 1 and under their supervisory remit has not complied with national or Union law such as requirements, in relation to the prudential supervision or market conduct supervision, including the requirements laid down in:
  - (a) Regulation (EU) 2019/2033, and, where relevant, Regulation (EU) No 575/2013;
  - (b) Directive (EU) 2019/2034, and, where relevant, Directive 2013/36/EU;
  - (c) Regulation (EU) No 600/2014;
  - (d) Directive 2014/65/EU;
  - (e) Directive 2014/59/EU;
  - (f) and any of the administrative penalties imposed or other administrative measures applied in accordance with Article 54 of Directive (EU) 2019/2034 when this information affects or is likely to affect that entity or the investment firm group as a whole.
- (2) The members and participants in the college shall discuss with the group supervisor the possible impact of these issues of non-compliance and measures, including sanctions for the relevant group entities or for the investment firm group as a whole.

### *Article 13*

#### *Establishment and update of the college supervisory examination programme*

- (1) The group supervisor in consultation with the members of the college shall, where appropriate, establish a college supervisory examination programme.
- (2) Where such programme is established, the group supervisor in consultation with the members of

the college shall identify the supervisory activities to be undertaken in relation to the group entities or the investment firm group as a whole. Such college supervisory examination programme shall contain at least the following:

- (a) the areas of joint work identified as a result of the supervisory review and evaluation process performed in accordance with Article 36 of Directive (EU) 2019/2034 or as a result of any other college activities undertaken, including in an effort to contribute to efficient supervision and to remove unnecessary duplication of supervisory requirements in accordance with Article 48(2)(f) of that Directive;
- (b) the respective supervisory examination programmes of the group supervisor and the members of the college for the Union parent undertaking and the entities of the investment firm group;
- (c) the areas of focus of the college work and its planned supervisory activities, including planned on-site examinations and on-the-spot inspections pursuant to Article 14 of Directive (EU) 2019/2034;
- (d) the members of the college responsible for undertaking the planned supervisory activities;
- (e) the expected timelines, both in terms of timing and duration, for each of the planned supervisory activities.

## SECTION 4

### PLANNING AND COORDINATION OF SUPERVISORY ACTIVITIES IN PREPARATION FOR AND DURING EMERGENCY SITUATIONS

#### *Article 14*

##### *College framework in preparation for emergency situations*

- (1) The group supervisor in consultation with the members of the college shall establish in advance a college framework in anticipation of possible emergency situations, taking into account the specificities and structure of the investment firm group.
- (2) The framework of paragraph 1 shall be formalised in the written arrangements concluded in accordance with Article 4 and shall include at least the following:
  - (a) the college-specific procedures that shall apply where an emergency situation as referred to in Article 47 of Directive (EU) 2019/2034 arises;
  - (b) the set of information that shall be exchanged when an emergency situation as referred to in Article 47 of Directive (EU) 2019/2034 arises.
- (3) The set of information referred to in point (b) of paragraph 2 shall include at least the following:
  - (a) an outline of the situation which has occurred, including the underlying cause of the emergency situation, and the expected impact of the emergency situation on the entities of investment firm group or on the group as a whole, on its clients, on the markets and on the stability of the financial system;
  - (b) an explanation of the measures and actions that have been taken or are planned to be taken, by the group supervisor or any of the members of the college or the entities of the investment firm group; and
  - (c) the latest available quantitative information regarding liquidity and capital position of

the investment firms of the investment firm group.

### *Article 15*

#### *General conditions with regard to exchange of information during an emergency situation*

- (1) The group supervisor and the members of the college shall exchange among themselves all information necessary to facilitate the exercise of the tasks referred to in Article 47 of Directive (EU) 2019/2034, subject to the confidentiality requirements laid down in Section 2 of Chapter 1 of Title IV of that Directive.
- (2) Upon being alerted of an emergency situation by any member or other participants in the college or having identified an emergency situation, the group supervisor shall communicate the information referred to in Article 14(2)(b), following the procedures referred to in Article 14(2)(a), to the members of the college who supervise the investment firm or its branches that are affected or likely to be affected by the emergency situation, the EBA and the ESRB.
- (3) Depending on the nature, severity, potential systemic impact or other impact, and likelihood of contagion of the emergency situation, the members of the college who supervise entities of the investment firm group that are affected or likely to be affected by the emergency situation and the group supervisor may decide to exchange additional information.
- (4) The information referred to in paragraphs 2 and 3, where applicable, shall be updated immediately when new information is available.
- (5) When the communication referred to in this Article is made orally, the concerned competent authorities shall follow up on it with written communication in a timely manner.

### *Article 16*

#### *Coordination of the supervisory assessment and response to an emergency situation*

- (1) Where an emergency situation occurs, the group supervisor shall coordinate the assessment of the emergency situation in cooperation with the members of the college, consulting the participants in the college as appropriate, and in particular consider the following:
  - (a) the nature and severity of the emergency situation;
  - (b) the impact or potential impact of the emergency situation on the entities of the investment firm group and on the group as a whole, as well as on its clients and on markets;
  - (c) the risk of cross-border contagion, in particular considering the potential systemic consequences in any of the Member States where the entities of the investment firm group are authorised or established.
- (2) Where an emergency situation occurs, the group supervisor shall, on the basis of the assessment referred to in the previous paragraph, coordinate the development of a supervisory response to the emergency situation in cooperation with the members of the college consulting with the participants in the college as appropriate.
- (3) The coordinated supervisory response shall define the supervisory actions needed, their scope, and the timetable for their implementation.
- (4) The group supervisor and the members of the college responsible for the supervision of the

entities of the investment firm group that are affected or likely to be affected by the emergency situation shall monitor and exchange information on the implementation of the coordinated supervisory response.

### *Article 17*

#### *Coordination of the external communication in an emergency situation*

- (1) The group supervisor and the members of the college responsible for the supervision of the entities of the investment firm group , affected or likely to be affected by an emergency situation shall coordinate to the extent possible their external communications, taking into account legal obligations and constraints under the national law.

### *Article 18*

#### *Entry into force*

This Regulation shall enter into force on the twentieth day following that of its publication in the *Official Journal of the European Union*.

This Regulation shall be binding in its entirety and directly applicable in all Member States.

Done at Brussels,

*For the Commission*

*The President*

## 5. Accompanying documents

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### 5.1 Draft impact assessment

1. Article 48(8) of the Directive (EU) 2019/2034 (Investment Firms Directive, IFD) mandates the EBA to develop in consultation with ESMA draft regulatory technical standards (RTS) to specify the conditions under which the colleges of supervisors established for investment firms groups exercise their tasks referred to in Article 48(1) IFD.
2. As per Article 10(1) of Regulation (EU) No 1093/2010 (EBA Regulation), any RTS developed by the EBA shall be accompanied by an Impact Assessment (IA), which analyses ‘the potential related costs and benefits’. This analysis should provide an overview of the findings regarding the problem to be dealt with, the solutions proposed and the potential impact of these options.
3. The EBA has conducted a data collection to inform the impact assessment and policy choices in this draft RTS.<sup>1</sup> The impact assessment is provided in the following section.

#### Problem identification

4. Until the introduction of the IFD consolidated supervision of investment firm groups, supervisory cooperation between the competent authorities responsible for the consolidated supervision and authorities involved in supervision of subsidiaries in other Member States have been organised on the basis of CRD and standards for the functioning of colleges of supervisors – Commission Delegated Regulation (EU) 2016/98 and Commission Implementing Regulation (EU) 2016/99. These standards have been developed mostly for the cooperation in supervision of cross-border banking groups and have not been tailored for the specific needs of investment firm groups, especially smaller and less complex ones.
5. IFD that entered into force on 25 December 2019 introduced a new prudential framework, tailored to address investment firms across the EU. The new framework applies to investment firms on individual and consolidated level and arrived with a new form of consolidation group, the investment firm consolidation group.<sup>2</sup> Furthermore, the IFD outlined specific requirements for the organisation of the consolidated supervisions of investment firm groups under the leadership of group supervisors in cooperation with competent authorities involved in supervision of the investment firm group’s subsidiaries. To facilitate the consolidated

<sup>1</sup> Competent authorities were asked to report data for all investment firm groups as defined in point (25) of Article 4(1) of Directive (EU) 2019/2033 (IFR) authorised and supervised under Directive 2014/65/EU in their jurisdiction, which are subject to consolidated requirements under IFR/IFD. Competent authorities were asked to report data for investment firm groups, for which they are determined as group supervisor according to Article 46 of IFD.

<sup>2</sup> Please refer to point (25) of Article 4(1) IFR and the [Draft RTS on prudential consolidation under IFR](#) (EBA; 2020) for the scope of consolidation of an investment firm group, including a summary of the type of entities within the scope of investment firm groups.

supervisions of the investment firm groups having establishment in more than one Member State, the IFD also introduced the possibility for setting colleges of supervisors different from the colleges of supervisors for banking groups under CRD, which are tailored to the specific needs of investment firm groups supervision.

6. In this context, effective and efficient colleges of supervisors play a crucial role because they are the vehicles through which the supervisory activities are coordinated and help to achieve converge of supervisory practice and ensure level playing field for cross-border investment firm groups across the Union.
7. The actual structure and organisation of colleges will vary depending on circumstances to ensure that there is effective sharing of information and cooperation between the group supervisors and other relevant supervisors that does not impede existing national legislation. However, it is key that the organisation and cooperation processes are clear for all college members.

#### Policy objectives

8. The draft RTS provides competent authorities with the requirements to establish colleges in a way that achieve effective supervision of cross-border investment firm groups operating through subsidiaries in other Member States, by ensuring close cooperation and sharing of information with competent authorities of those Member States. The draft RTS further provides practical details about the participation of authorities in college meetings and activities and the communication between the college and investment firm groups. Lastly, the draft RTS aims to foster efficient and effective coordination and planning of supervisory activities in going concern and emergency situations.
9. The requirements provided in the draft RTS is expected to contribute to a harmonised implementation of the prudential framework for investment firms. A well-functioning supervisory college is not only important at the micro-prudential level, but also for the promotion of financial stability at the macro-prudential level. While focusing on the stability of an individual investment firm group, colleges can promote a more coherent approach across different jurisdictions to the consistent and effective implementation of policy tools.

#### Baseline scenario

10. IFD stipulates that college of supervisors may be established in cases, where competent authorities responsible for the supervision of investment firms in different Member States that are part of the same group need to coordinate tasks (Article 48(2)(c) of the IFD) or where subsidiaries of an investment firm group headed by an Union parent undertaking are located in a third country (Article 48(3) of the IFD).

11. Most of the EEA investment firm groups operate in one Member State (81.0%). There are 47 investment firm groups in the EU, which operate cross-border, i.e. they have subsidiaries in other Member States or third countries.<sup>3</sup>

12. Table 1 shows that out of those 47 groups, 33 have subsidiaries in a third country<sup>4</sup> and 9 have an investment firm located in at least one other Member State. Only very few (1.3%) investment firm groups operate subsidiaries in both, another Member State and in third countries. The majority of cross-border groups are classified as Class 2 (95.7%).

Table 1 Number of EEA cross-border investment firms groups, by IFR/IFD classification

	Number of EEA IF groups			Share of total EEA investment firm groups
	Class 2 group	Class 3 group	Total	
<b>Cross-border group</b>	<b>45</b>	<b>2</b>	<b>47</b>	<b>12.0%</b>
<i>of which: subsidiaries in EU MS and third country</i>	4	1	5	1.3%
<i>of which: subsidiaries in third country only</i>	33	0	33	8.4%
<i>of which: subsidiaries in EU MS only</i>	8	1	9	2.3%
<b>Not cross-border group</b>	<b>186</b>	<b>154</b>	<b>340</b>	<b>87.0%</b>
<b>Total IF group</b>	<b>235</b>	<b>156</b>	<b>391</b>	<b>100.0%</b>

Source: EBA 2020 Data collection on investment firm groups.

Note: Sample 391 investment firm groups. Sub-sections may not sum to total due to missing information for some investment firm groups.

13. Figure 2 shows that most cross-border investment firm groups are located in CY (17), followed by NO (5), DE (5) and ES (5). Their subsidiaries are mainly located in third countries (40 subsidiaries) (Figure 1). Within the EU, most of the subsidiaries are located in LU (6) and SE (4).

14. Most groups with subsidiaries in other Member States operate in only one other country outside of their home country. A few groups have subsidiaries in two other Member States (4) and one group has subsidiaries in 12 other Member States.

<sup>3</sup> The following analysis is based on the EBA 2020 Data collection on investment firm groups with reference date Dec-19, for which 408 investment firm groups are reported. The sample of the analysis are 391 investment firm groups, for which data with sufficient quality were reported.

<sup>4</sup> UK is considered as third country.

Figure 2 Number of subsidiaries of cross-border IF groups, by country of subsidiary

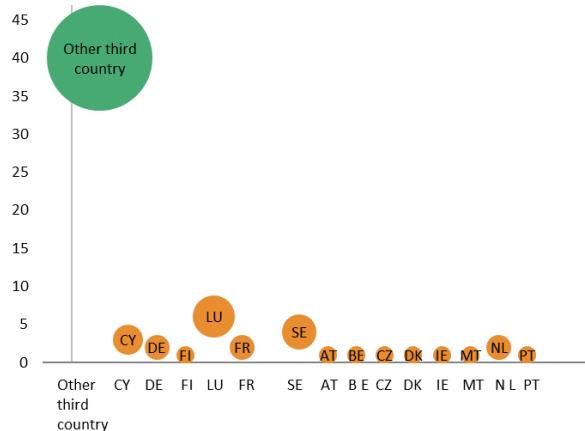
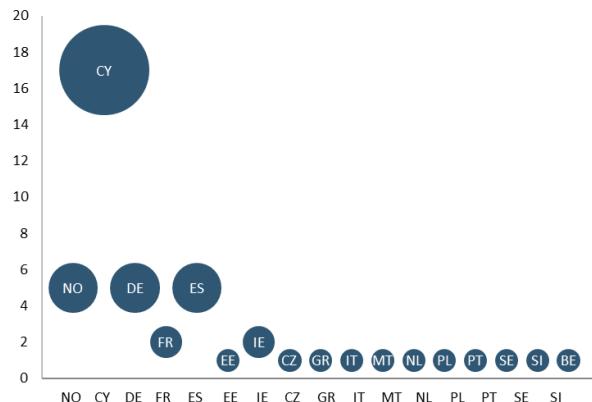


Figure 1 Number of cross-border IF group, by country



Source: EBA 2020 Data collection on investment firm groups.

Note: Sample 391 investment firm groups.

16. The diversity of cross-border investment firm groups ranges from simple structures, with operations in neighbouring countries up to large groups with several subsidiaries within and outside of the EU. For none of those groups a college of supervisors is currently in place.

17. Without the establishment of colleges, it is more complicated for competent authorities to develop a good understanding of the risk profile and vulnerabilities of the investment firm group under their supervision. Moreover, without a clear structure for information exchange and cooperation between supervisors, it is more difficult for them to supervise each individual component of the group.

18. The supervision of cross-border investment firm groups may involve supervisors less experienced in the supervision of (large) groups. Clear guidance on the organisation and cooperation processes for colleges is expected to support them and can establish a common understanding with other college members.

#### Options considered and Cost-Benefit Analysis/ preferred option

19. The following analysis aims first to provide a high-level assessment of the overall costs and benefits of implementing the draft RTS, analysing the impact on competent authorities in comparison to current practices (no colleges of supervisors established specifically for investment firm groups, although they should have been established based on the CRD requirements).

20. Second, the cost-benefit analysis focuses on a specific technical option. Section 1 (Establishment on colleges) of the draft RTS provides group supervisors with guidance and a set of criteria to take into consideration when determining a new college of supervisors. The EBA considered if this Section should include only the operational functioning of already established colleges or should also provide minimum standards, under which a college is required.

21. To this end, the EBA has considered the following options on Article 2 of the draft RTS for specifying the conditions, under which colleges are established:

**Option 1.1:** To precise the conditions where a college of supervisors **shall** be established, in particular where the investment firm group consists of at least two Class 2 investment firms authorised and operating in two different Member States.

**Option 1.2:** To provide a set of criteria to help group supervisor to determine whether the establishment of a college of supervisors is appropriate.

22. Table shows for the 14 investment firm groups in the EEA with subsidiaries in other EU Member States the classification of the individual investment firms of the group. Under Option 1.1, 11 college of supervisors are required.<sup>5</sup> Out of those 11 colleges, 3 would be hosted by NO, followed by DE (2) and BE, CY, EE, PL, ES and SE with one mandatory college, respectively.

**Table 2. Number of Class 2 subsidiaries in other EU member states of cross-border IF groups, by classification of IFs in home country**

	Number of Class 2 IF groups in other EU MS			Total groups with Class 2 IF
	Number of Class 2 IF in other EU MS: 1	Number of Class 2 IF in other EU MS: 2	Number of Class 2 IF in other EU MS: >2	
<b>Cross-border group subs in EU MS*</b>	<b>9</b>	<b>3</b>	<b>1</b>	<b>14</b>
of which: home country classification: Class 2	7	1	1	9
of which: home country classification: Class 3	1	0	0	1

Source: EBA 2020 Data collection on investment firm groups.

Note: Sample 14 investment firm groups with subsidiaries in other EU Member States (MS). \*No home country classification for 4 groups. No subsidiary classification for one group.

23. The draft RTS targets larger and systemically important investment firm groups. Under Option 1.1, 23.4% of cross-border investment firm groups fall under this category and would require a college of supervisors. This option would benefit the harmonised application of supervisory and prudential requirements for the largest investment firm groups, while reducing compliance burden for smaller investment firm groups.

24. However, while the classification under IFR is an adequate measure of the risks faced and posed by investment firms, it may not be sufficient to map the complexity of cross-border investment firm groups adequately.

25. Option 1.2 allows the consolidating supervisor to consider further information when mapping cross-border investment firm groups and provides them with greater flexibility. It ensures convergence of supervisory practices by requiring notification to the EBA of situations where

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<sup>5</sup> The sum of 7 colleges for the groups, which have a Class 2 investment firm in their home country plus one other Class 2 investment firm in another EU Member State plus 4 colleges for the groups, which have subsidiaries in more than 2 other Member States.



the group meets the criteria specified in the draft RTS, but the group supervisor decides the establishment of a college not to be appropriate. **Option 1.2** is the preferred option

#### Overall impact assessment

26. While for the investment firm groups under the new consolidation scope, no colleges are established yet, the current framework requires competent authorities to establish colleges for groups on consolidated and sub-consolidated level, under which most investment firms should be supervised.

#### Mapping exercise

27. The current framework requires competent authorities to map group entities in accordance with CRR/CRD, without taking into consideration some types of entities relevant for investment firm groups (e.g. Tied Agents, Ancillary services). The draft RTS introduces a group mapping consistent with the new consolidation scope for investment firms, which requires competent authorities to identify those entities for the first time.

28. Further, the information reflected in the mapping need to include for the first time the new classification of investment firms compared to the current assessment whether the investment firm is subject to requirements or not. In relation to providing information about the importance of group entities, competent authorities have more flexible on providing those information under the draft RTS.

29. The cost of the mapping exercise is expected to mainly arise from identifying the entities currently not in scope of the mapping of groups and from the classification of all group investment firms and the parent undertaking, where applicable. On the other hand, the determination of the significance and relevance of entities is expected to be less time consuming compared to current practices.

30. College members would benefit from an up-to-date mapping that reflects the new scope of consolidation for investment firm groups. This is expected to ensure that all relevant authorities are invited to be part of the colleges and all information relevant for the group can be exchanged among college members.

#### Functioning of colleges

31. In comparison to the existing legislation for the colleges of supervisors under CRD, the establishment of the written arrangements of the draft RTS includes similar information, however, it is tailored to investment firm groups. The written arrangements include now the description of procedures around sanctions and the coordination of information requests from competent authorities of the clearing house or qualifying central counterparty.



32. Additional costs are expected to arise from the interaction between competent authorities during the process of agreeing on/updating the written arrangement. Given the small changes in comparison to current practices, it is expected that competent authorities are experienced in providing this tasks and the additional costs are expected to be small. The updated written arrangements will facilitate the functioning of the colleges and gives clear, pre-agreed guidance to all members on the coordination and cooperation with other relevant authorities.

#### **Planning and coordination of supervisory activities in going concern situations**

- 33. The draft RTS provides supervisors with more flexibility in the exchange of information on early warning signs, potential risk and vulnerabilities in comparison to current practices, where a pre-described list of elements is required to be covered.
- 34. While supervisors are currently required to exchange information on the non-compliance with CRR/CRD, under the draft RTS they will need in addition to provide information also on non-compliance with IFR/IFD, MiFIR/MiFID and BRRD.
- 35. In comparison to the existing legislation for the colleges of supervisors under CRD, the draft RTS requests similar information to be exchanged, however, tailors the request to information relevant for the supervision of investment firms. It is expected that additional costs arise from the preparation, communication and analysis of information in relation to the exchange of information previously not shared within colleges. Especially, the review of non-compliance with IFR/IFD, MiFIR/MiFID and BRRD, in addition to CRR/CRD, is expected to demand additional costs. On the other hand, some specific information are no longer required and the current costs related to providing that information are no longer applicable.
- 36. The benefits of exchanging the specific information will be that supervisors will now receive relevant information specific for the supervision of investment firms. This is expected to facilitate the performance of their tasks and the functioning of the college, reduce the number of information requests to the supervised entities and other authorities and supports supervisors in developing a common risk profile of the group.



## 5.2 Overview of questions for public consultation

**Question 1:** What are the views of the stakeholders on the requirements on the interaction between the college, its members, the investment firm group and its entities?

**Question 2:** What are the views of the stakeholders on the draft technical standards?